

FOR INFORMATIONAL USE ONLY
COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. 02-MSRC-008

**COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF MINES AND MINERALS**

COMPLAINANT

v.

CORBETT HOWELL

RESPONDENT

FINAL ORDER

This matter having come before the Commission on the parties' Joint Motion to Approve Settlement Agreement, and the members of the Commission having reviewed the Settlement Agreement filed on November 13, 2002 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY ORDERED as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The Respondent's Shotfirer's Certificate, # MN-***-**, issued by the Commonwealth of Kentucky, shall be permanently revoked effective November 12, 2002;
3. Pursuant to the terms of the Settlement Agreement, the Respondent has agreed not to re-apply to become a shotfirer in the Commonwealth of Kentucky at any time in the future;
4. The Respondent shall turn over his shotfirer's certificate to a representative of the KDMM on or before October 31, 2002, at a time and place

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to be arranged by the parties;

5. The Respondent's Underground Mine Foreman's Certificate, # A-***-**, issued by the Commonwealth of Kentucky, shall be placed on probation for a period of two (2) years effective November 12, 2002;

6. Pursuant to the terms of the Settlement Agreement, the Respondent has agreed, and therefore shall be required, to comply with all state and federal mine safety and health laws and regulations;

7. Violation of the aforesaid laws or regulations may result in the KDMM filing a motion with the Mine Safety Review Commission (hereinafter referred to as the Commission) to suspend the Respondent's underground mine foreman's certificate for the remainder of the probationary period;

8. The Settlement Agreement signed by the parties and filed with the Commission shall be incorporated by reference and attached hereto;

9. This Final Order represents a final disposition of all issues between the parties in this matter. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission. Pursuant to KRS 351.194(8), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of an order.

Entered this _____ day of November 2002.

BAYARD V. COLLIER, CHAIR
MINE SAFETY REVIEW COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid, to the following this _____ day of November 2002:

HON. BILLY R. SHELTON
JONES, WALTERS, TURNER
& SHELTON, PLLC
151 N. EAGLE CREEK DRIVE
ONE FOUNTAIN PLAZA, STE. 101
LEXINGTON KY 40509
Counsel for the Respondent

And by messenger mail to:

COMMISSIONER FRANK DELZER
DEPT. OF MINES & MINERALS
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

HON. TONY OPPEGARD
GENERAL COUNSEL
DEPT. OF MINES & MINERALS
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

And the original shall be kept on file:

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
FRANKFORT KY 40601

DIANE SCHULER FLEMING
GENERAL COUNSEL
MINE SAFETY REVIEW COMMISSION

KENTUCKY MINE SAFETY REVIEW COMMISSION

KENTUCKY DEPT. OF MINES & MINERALS)	
)	
Complainant)	
)	
v.)	Administrative Action No. 02-MSRC-008
)	
)	
CORBETT HOWELL)	
)	
Respondent)	

SETTLEMENT AGREEMENT

Come the Complainant, the Kentucky Department of Mines & Minerals (“KDMM”), and the Respondent, Corbett Howell (“Howell”), through their respective counsel, and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the dismissal of this action against him, Howell hereby admits to violating KRS 351.330 (15) on May 3, 2001, as set forth in paragraph 9 of the Complaint, and agrees to the **PERMANENT REVOCATION OF HIS SHOTFIRER’S CERTIFICATE (MN-***-**)**, issued to him by the Commonwealth of Kentucky, effective upon the signing of this Settlement Agreement by both parties. Howell shall turn over his shotfirer’s certificate to a representative of the KDMM on or before October 31, 2002, at a place and time to be arranged

by the parties.¹ Howell further agrees that he will not re-apply to become a shotfirer in the Commonwealth of Kentucky at any future time. In admitting to the violation of KRS 351.330 (15), Howell asserts that said violation was not intentional.

In addition to the permanent revocation of his shotfirer's certificate, Howell agrees to the
PROBATION OF HIS UNDERGROUND MINE FOREMAN'S CERTIFICATE

(A-*-**) FOR A PERIOD OF TWO (2) YEARS**, also effective upon the signing of this Settlement Agreement by both parties. During said period of probation, if Howell commits any intentional violation of a state or federal mine safety law - or if he orders anyone to violate a state or federal mine safety law - that places a miner in imminent danger of death or serious injury, KDMM may file a motion with the Mine Safety Review Commission to revoke Howell's mine foreman's certificate for the remainder of the two (2) year probationary period.² In that event, Howell would be entitled to a hearing before the Commission on the allegations against him.

Howell further agrees that this Settlement Agreement, and any final order issued herein by the Mine Safety Review Commission ("the Commission"), will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1 (5); and that any future adjudication against him by the Commission - regarding a separate

¹ If Howell is unable to find his shotfirer's certificate, his attorney shall so notify KDMM's general counsel in writing by October 21, 2002.

² If the circumstances warranted, KDMM would also retain the right to file a separate disciplinary action with the Commission seeking other penalties against the Respondent for his conduct.

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alleged offense - will be deemed a “subsequent offense” as defined at 805 KAR 8:010, Section 1
(13).

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The parties state that they have carefully read and considered this Settlement Agreement prior to signing the Agreement, and that they understand and agree to its terms and provisions. KDMM and Howell acknowledge that there are no other promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

CORBETT HOWELL

Wayland, Kentucky *****

FRANK X. DELZER, Commissioner
Kentucky Dept. of Mines & Minerals
P.O. Box 2244
Frankfort, Kentucky 40602

DATE

DATE

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Settlement Agreement was mailed this _____ day of October, 2002, to Billy R. Shelton, Attorney-at-Law, JONES, WALTERS, TURNER & SHELTON, 151 N. Eagle Creek Drive, One Fountain Plaza, Suite 310, Lexington, Kentucky 40509.

TONY OPPEGARD
General Counsel
KENTUCKY DEPT. OF MINES & MINERALS